

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCP 28(c);
Ariz. R. Crim. P. 31.21

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/16/10
RUTH WILLINGHAM,
ACTING CLERK
BY: JT

RICHARD M.,) 1 CA-JV 10-0092
)
Appellant,) DEPARTMENT A
)
v.)
) MEMORANDUM DECISION
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, JOCELYN M. and SOLIA) Ct.; Rule 28 ARCAP)
M.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD18511

The Honorable Roger E. Brodman, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee/Arizona Department of Economic
Security

David W. Bell Mesa
Attorney for Appellant/Father

K E S S L E R, Judge

¶1 Richard M. ("Father") appeals the superior court's determination that his two minor children are dependent pursuant to Arizona Revised Statutes ("A.R.S.") section 8-201(13)(a)(iii)

(Supp. 2009) (mandating dependency finding if a child's home is "unfit by reason of abuse, neglect, cruelty or depravity by a parent"). The State presented sufficient evidence to support a finding that an abusive environment rendered the home unfit. Therefore, we affirm the judgment of the superior court.

FACTS AND PROCEDURAL HISTORY

¶2 The State filed a dependency petition alleging that Father physically and sexually abuses his children and that he commits domestic violence against their mother in their presence. The superior court conducted an evidentiary hearing.

¶3 At the hearing, the State presented evidence that in October 2009 one of the children was afraid to return home and that she told a CPS caseworker Father had dragged her down a stairwell and threatened to kill her.¹ The child also stated that Father had been abusing her mother for years and threatened to kill anyone who spoke about it. During the interview, the CPS worker observed minor injuries on the child.

¶4 CPS had already conducted a Team Decision Making Meeting ("TDM") involving the two minor children, their parents, other relatives, and certain CPS staff. During the meeting, both children stated that there was abuse in the home and the

¹ "Evidence of the out-of-court statements . . . of a child regarding acts of abuse or neglect perpetrated on the child is admissible for all purposes . . . if the time, content and circumstances of such statement . . . provide sufficient indicia of its reliability." Ariz. R.P. Juv. Ct. 45(E).

older child alleged that she had been sexually abused by Father. The younger child alleged generally that Father physically abuses both children and their mother and that he uses threats to prevent them from discussing the abuse. During a follow up interview, the older child indicated that the sexual abuse consisted of Father following her into her bedroom, ordering her to undress, touching her chest, and threatening to kill her sister and her mother if she revealed the abuse.

¶15 At trial, the younger child recanted her abuse accusation and the older child recanted the portion of her allegation related to sexual abuse. The State presented evidence that the older child had previously recanted accusations against Father after he made death threats against her and that children commonly recant abuse allegations.

¶16 The superior court found that abuse existed. The court noted that determining the relative credibility of the children's abuse accusations and recantations was difficult. Regarding sexual abuse against the older child, the court found that the specificity of the initial accusation was sufficient to merit accepting the accusation over the recantation. Regarding the general environment of violence within the household, the superior court found that the specificity of the older child's initial accusations, the presence of physical injury consistent with the accusation, the fact that the accusation was made

multiple times and by both children, and CPS observations of Father's demeanor when dealing with others was sufficient to indicate that physical abuse was present in the household.

¶7 The superior court adjudicated the children dependent. Father filed a timely notice of appeal. This Court has jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. § 8-235(A) (2007).

ANALYSIS

¶8 The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). On appeal, we review the juvenile court's findings of fact for clear error, *Anonymous v. Anonymous*, 25 Ariz. App. 10, 11-12, 540 P.2d 741, 742-43 (1975), and view the evidence in the light most favorable to affirming its decision. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (quoting *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994)). We will uphold the "juvenile court's ruling in a dependency action unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them." *Pima Cnty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶9 Abuse exists if the person inflicts or allows injury to another person. A.R.S. § 8-201(2). Abuse also includes sexual abuse pursuant to A.R.S. § 13-1404(B) (2010), which may be committed by having sexual contact with a person under fifteen years of age.² Sexual contact includes "any direct or indirect touching, fondling or manipulating of any part of the . . . female breast." A.R.S. § 13-1401(2) (2010).

¶10 Father's only argument on appeal is that there was no substantial evidence of abuse to support the superior court's ruling because the children recanted their accusations. We disagree for two reasons. First, the older child's recantation was limited to the sexual abuse allegation. Both children alleged that physical abuse took place in the home. While the younger child recanted that allegation, the court had discretion to accept the credibility of the original allegation. The detailed accusation of physical abuse, supported by a CPS worker's observation of injuries consistent with the allegation is sufficient to support a finding that there is abuse in the home.

¶11 Further, the superior court did not abuse its discretion by accepting the credibility of the older child's recanted sexual abuse allegation. The out-of-court accusation

²The older daughter alleged that the sexual contact took place when she was fourteen.

of abuse was admissible for the purpose of proving dependency so long as adequate indicia of reliability exist. Ariz. R.P. Juv. Ct. 45(E). Regarding the older child's accusation of sexual abuse, the superior court reviewed a tape of an interview between the child and a Yuma police detective. The superior court found that her definite demeanor and use of specific detail while making the accusation bolstered the credibility of the statement. Further, the State presented evidence that she had recanted prior allegations against Father after Father threatened to kill her. The superior court did not abuse its discretion in finding that Father sexually abused the older child.

CONCLUSION

¶12 For the foregoing reasons, we affirm the superior court's finding that Father's minor children are dependent.

/s/

DONN KESSLER, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

JON W. THOMPSON, Judge